No. 92-1990

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1992

REBA DOUGLAS, for herself and
all others similarly situated,

Petitioner,

v.

C. PATRICK BABCOCK, Director of the
Michigan Department of Social Services,
and LOUIS SULLIVAN, Secretary of Health
and Human Services,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT BABCOCK IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The following is intended to supplement and/or correct certain statements in Appellant's Petition for Writ of Certiorari.

Petitioner Douglas' Medicaid benefits were terminated in 1985 following an administrative hearing at which it was determined that Petitioner failed to cooperate in establishing the paternity of one of her children. The facts establishing Petitioner's noncooperation are set forth in the Michigan Department of Social Services' (MDSS) May 5, 1985 Administrative Hearing Decision. R.42[1]

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[1]In the Petition, pp 12-13, Petitioner's recitation of the facts surrounding the determination of her failure to cooperate is in part incomplete and in part not supported by the Administrative Hearing Decision, which is the only reference to such facts on the record below. However, these facts are not material to the legal issues presented by Petitioner's Petition for Writ of Certiorari.

Thereafter, Petitioner became pregnant and informally again requested Medicaid benefits (no application was filed). R.13, p 4. As reflected in the Answer and Cross-Claim of Respondent Babcock (R.13), it has been the State Respondent's position from the outset of this litigation that the State "was willing to provide pregnancy-related Medicaid benefits to Plaintiff, but for [Respondent] Sullivan's agency's directive to MDSS that such payments are, in the interpretation of the federal agency, prohibited under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq." R.13, p 4. See also Court of Appeals Decision, n. 1. Until February 1, 1987, MDSS did provide Medicaid coverage for otherwise eligible pregnant women, even where they had failed to cooperate with

MDSS in establishing paternity or obtaining medical support for another child in the home. R. 13, p 7. The State Respondent informed the District Court that "but for Cross-Defendant Sullivan's interpretation of Title XIX of the Social Security Act, MDSS would be providing Medicaid benefits to such pregnant women who are otherwise eligible for Medicaid benefits under 42 U.S.C. 1396 et seq." R.13, p 7.

ARGUMENT

THE STATE OF MICHIGAN WOULD PROVIDE MEDICAID COVERAGE TO OTHERWISE ELIGIBLE NONCOOPERATING PREGNANT WOMEN IF IT WERE PERMITTED TO DO SO BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Pursuant to 42 U.S.C. 1396, the U.S. Department of Health and Human Services (HHS) makes payments to states partici-

pating in the Medicaid program in accordance with a "state plan for medical assistance" which must be approved by the Secretary of HHS. 42 U.S.C. 1396k sets forth certain provisions which must be included in the state plan relating to a Medicaid recipient or applicant's obligation to cooperate in establishing the paternity and obtaining medical support from the father of any child born out of wedlock who is eligible for medical services. 42 U.S.C. 1396a(l) creates Medicaid eligibility for certain pregnant women who would not otherwise be eligible for Medicaid benefits. The State of Michigan has made it clear that it would pay benefits to pregnant women similarly situated to Petitioner Douglas but for the federal Respondent's interpretation of the Social Security Act as prohibiting

eligibility for pregnant women who would be eligible for Medicaid under other provisions of the Social Security Act, but for their refusal to cooperate with the State in establishing the paternity of their Medicaid-eligible children.

CONCLUSION

The State Respondent does not oppose the Petition for Writ of Certiorari.

Respectfully submitted,

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